

**Minutes – Christopher Dickson – BOA 2012-02 – January 4, 2012
7 Center Street**

A New Castle City Board of Adjustment Hearing took place on January 4, 2012 at 8 p.m. in the City of New Castle's Town Hall.

Present: Donald A. Reese, Mayor
Daniel R. Losco, City Solicitor
David J. Athey, City Engineer

City Personnel: Jeff Bergstrom, City Code Official

Mayor Reese called the meeting to order at 8:10 p.m. Roll call was taken.

Mr. Losco noted for the record that he has done legal work for Mr. Dickson; therefore, he is recusing himself from this matter. He can address technical questions.

Mayor Reese read the Notice of Public Hearing that states, "An application has been filed by Christopher Dickson, 114 Willow Grove Mill Drive, Middletown, Delaware 19709, for property located at 7 Center Street, New Castle, Delaware, parcel number 21-017.00-045, seeking a special exception pursuant to §230-18B(6) of the Code to permit a corner store at the property.

For the purpose of considering this application, the Board of Adjustment will hold a Public Hearing on Wednesday, January 4, 2012, at 8 p.m. in Old Town Hall, 2nd Floor, located at 2nd and Delaware Streets, New Castle, Delaware."

An affidavit of publication was published in the News Journal and the New Castle Weekly. Mr. Bergstrom testified the property has been properly posted.

Mr. Brian P. Glancy, counsel for Mr. Dickson, presented. The property was the former Froggy's Den near the New Castle police substation and has been vacant for some time. His client purchased the property in June 2011. The previous owner ceased operating the store in about 2008. The site has been a store for approximately 50-75 years. The reason for the special exception is because the existing non-conforming use was lost when the previous owner stopped using it and a period of 12 months expired. It is in R3 zoning, Section 230-18 of the Code allows a corner store under special exception.

They are not seeking to convert an existing residential building to a business, it is not a new development, and no plans have been submitted. Mr. Dickson purchased the property with the intent of reinstating the property's use as a corner store. A one-bedroom apartment is part of the property.

In order to grant a special exception pursuant to Section 230-57, the proposed use is in harmony with the purpose and intent of the chapter and will not adversely affect the public's interest.

A plot plan was submitted with the application. The parcel has been sub-divided into two (2) lots allowing the police substation next door. The remaining lot is a 34-foot wide lot. A satellite photo of the Dobbinsville area was entered as Exhibit 3. The restoration of the store will not have an impact on the area.

The building is in poor condition and will be improved if the application is approved. The area is not well maintained and this store will serve as an improvement to the neighborhood.

Mr. Glancy said the City of New Castle's Comprehensive Plan addresses recreational/open space areas in the City, namely Dobbinsville. Having a walk-up convenience store near the parkland in Dobbinsville will be attractive.

Parking was discussed. Mr. Glancy does not believe parking will be an issue. There are adequate spaces along West 7th Street and alongside the building on Center Street. Section 230-18 cites the idea of a corner store and the special exception that allows its use. It specifically references a corner store for pedestrian walk-up traffic.

This project is in line with the City's Comprehensive Plan by specifically addressing open space, growing neighborhood business, and rehabilitating residential areas that have become run down.

Mr. Dickson presented drawings of renovation plans and explained same. There are dormers upstairs to free up more space and little dormers on the side of the building. There is a front elevation public entrance porch on the front of building. Encroachment on the sidewalk is limited. The roof must be redone. There are two (2) elevation options and Mr. Dickson described each. There will be no changes in space to the existing store front. On the Center Street side there is a two-car garage area that he plans on converting part of the garage area to expand the living space. The façade will be stone and there will be new windows installed. It is a commercial/residential property. The apartment has always existed along with commercial space. They are enhancing the second floor and adding a master bedroom.

Neighbors are supportive of enhancing the property; there is no opposition to the project. Mayor Reese reiterated his concern with parking. Mr. Athey noted that as the Riverbend development is developed more there may be more pedestrian/vehicular traffic that could impact neighbors. Mr. Glancy said the specifics for a special exception specifically relates to walk-up trade. This structure is long and one side runs along Center Street. Once the apartment is occupied it may generate another vehicle. There is enough parking for 4-5 vehicles along the Center Street side and the proposed garage could be used for parking for the apartment tenant. There are no parking restrictions for the shoulders along 7th Street. Mr. Losco noted for the record that the City has granted an easement for the building encroachment on Center Street to remain. The elevation of the building is about the same as every rowhouse on Center Street. Everyone parking in front of their rowhouse is parking on Center Street, not another parking area. *(Brief discussion about ownership of certain lands followed.)*

Mr. Bergstrom said the Trustees of the New Castle Common owns a piece of the land used for some parking in the area. Mr. Athey referenced Zoning Code Section 230-18, Special Exception, Bulk Area Standards. The standard says the maximum lot coverage is 75%. Front and rear yard setback requirements is about 75% and he does not see those setbacks on the survey. This is a corner lot making setbacks more "tricky." He asked Mr. Losco for guidance.

Mr. Losco said the application is for a special exception and part of that special exception is it needs bulk area standards. If there is not an appropriate setback; the building encroaches on the side right-of-way. Mr. Losco suggested a variance is needed.

Mr. Glancy said even though the non-conforming use expired, the grandfathering of the setback and other lot area requirements do not expire and are still in place. Mr. Losco informed if they were using the structure for an R3 purpose they would be fine. They are looking for a special exception and one of the conditions is they need to meet a Retail/Commercial (RC) standard for setbacks. He further advised they can amend their application to include this, but no action may be taken tonight because the public must be notified in accordance with FOIA requirements.

Mr. Glancy requested a motion be made to amend their application to include variances for the requirements for the setback and area requirements for RC zoning as noted. Mr. Athey concurs with Mr. Losco.

Mr. Losco stressed that Mr. Glancy review the list of requirements (A thru D) of Section 230-57 for special exceptions to ensure there is basis to grant the special exception. Mr. Glancy reviewed the list and offered the following: This is a corner establishment; the store will be on the first floor only; merchandise sold can include only what is set forth in this section; anything beyond this section would make Mr. Dickson in violation of the conditions; there will not be restaurant fare. Fast, convenient-type items, pre-packaged goods, sodas and the like will be part of the inventory. There is no expectation for seating. There may be deli sandwiches served, but no decision has been made. They will need to comply with the variance requirement. Parking has been discussed tonight. Mr. Glancy understands these are a part of the use allowed once a special exception is granted and must be followed beyond the granting of the special exception.

Mayor Reese made a motion to accept the applicant's request to amend their application to include not only the variance requests to comply with the RC bulk area requirement, but also a variance for special exception requirements and continue this hearing so it can be publicly noticed. Mr. Athey seconded the motion. The motion was approved.

The hearing was adjourned at 8:50 p.m.

Respectfully submitted,

Debbie Turner

Debbie Turner
Stenographer